

### **REMARKS**

Claims 1, 2, 4, 5, 11, and 14 are currently amended, and addressed below. Some remarks relating to the rejections issued in the earlier office action dated May 23, 2005 are in the Amendment and Response submitted August 22, 2005.

### **EXAMINER INTERVIEW SUMMARY**

A telephone interview was held between Examiner Johnson and Applicant's Attorney Charles A. Lemaire on January 25, 2005. The *Gregory* patent was discussed. During the course of the interview, Examiner Johnson asserted that *Gregory* was necessarily attached to a gun and used as a gunsight, because it was a hunting aid, "said" it compensated for projectile drop, "said" it was obvious to change to compensate for target movement, and that the Figures were not literally to be used but represented abstractions. Examiner Johnson argued that, in order to make sense as a hunting aid, the telescope of *Gregory* would need to be a gunsight.

Applicant's Attorney Lemaire pointed out that the *Gregory* devices were said to be range finders—not gunsights; nowhere described its use as a gunsight or attached to a gun; included a plurality of example transparencies through which the object itself is viewed, none of which could possibly function as a gunsight that would compensate for projectile drop as an aiming device if attached to a gun, but all of which would function as a range finder. It is thus not enabling for use as a gunsight and teaches away from use as a gunsight. No agreement was reached in the telephone interview.

### ***Claim Rejections – 35 USC § 102***

Regarding October 25, 2005, Office Action § 2: Claims 1, 4-5, 10, 12, 14, 16-17, 19-22, and 26 were rejected by the Examiner under 35 U.S.C. 102(b) as being anticipated by *Gregory* (US Patent 4,787,739). Applicant respectfully traverses.

Applicant agrees with the Examiner that *Gregory* shows a first and second sight indicator and a substantially straight line in Figure 9, however disagrees with the Examiner's assertion of attachment to a gunbarrel to function. Further, the smaller deer outline at 300 in Figure 9 is above, and therefore would be further from the gunbarrel, relative to the larger deer outline at

100, but this cannot operate as a projectile-drop compensation (which requires the larger image on top further from the barrel) nor a target-motion compensation (since only if the deer were flying above and away from the hunter from above would one aim lower for the further target—not likely nor enabled). Still further, the configuration shown in each and every Figure of *Gregory* does not and cannot function as a gunsight/gun-aiming device if attached to a gunbarrel. If one were to modify *Gregory* to function as a motion-compensating gunsight, it is only impermissibly using the teaching of the present application that such a modification is enabled.

Applicant agrees that *Gregory* explicitly discusses a hunter seeking game (Col 6.55 – 6.60), but the device *Gregory* describes is a rangefinder. Even though *Gregory* describes prior-art Figure 5 as an image-erecting riflescope, he says his LCD of figure 6 would be used in lieu of the reticle 21 in telescope 20. The images of LCD 25 in Figure 6 are superimposed—a configuration useful as a rangefinder but not as a gunsight. Col 6.51-6.60 describe replacing or augmenting conventional crosshairs with the LCD reticle, but nowhere is described showing both a small image further from the gunbarrel (were one motivated to attach *Gregory*'s rangefinder to a gun) and a larger image closer to the gunbarrel, configured to compensate for target motion.

*Gregory*'s Figure 1 shows three outlines of deer, two of which are offset side-to-side relative to a centerline of a gun if the range finder were attached to a gun, and therefore useless as an aiming device, and the smallest of which (200 yards) is located at a vertical location below the largest (50 yards), but above the middle (100 yards) and thus again useless as an aiming device. Thus Figure 1 functions as a range finder for deer but not as an aiming device/gunsight for deer if attached to a gun. Similarly, *Gregory*'s Figure 9, while showing crosshairs, shows the distant (300), smaller deer outline above the closer (100), larger deer outline, thus being useless as a projectile-drop compensating device if attached to a gun (but functioning as a range finder). Further, all deer are facing the same direction in *Gregory*'s Figure 1 even though some are to the right of centerline and some are left, making it useless as a lead-compensating device for moving targets if attached to a gun (but functioning as a range finder). To compensate for projectile drop, one needs to aim the gun higher for a distant target; in contrast, one needs to point rangefinder 40 of lower to superimpose the smaller transparency image on a distant deer,

teaching away from use as a gunsight, but still useful as a rangefinder. *Gregory's* Figure 2 shows a cross-section of Figure 1 wherein due to its configuration, if it were mounted to a gun, one need to point the gun higher to align with targets that superimpose on the bottom of the transparency film, thus one would need to have smaller targets (corresponding to more distant game) on the bottom of the film and aligned with a vertical crosshair, in contrast to *Gregory's* Figure 1 and Figure 9.

Applicant agrees that the inherent function of a telescope with an aiming reticle such as prior-art Figure 5 of *Gregory* is for attachment to a rifle. However, none of the Figures showing *Gregory's* invention function as a gunsight were they to be attached to a gunbarrel and the hunter attempted to use the device to aim the gun at a selected target among more than one outline shown or described by *Gregory*. *Gregory's* devices only work when used as a range finder, which is exactly what *Gregory* describes as their use. One would need a conventional riflescope that had a different reticle than any shown in *Gregory* and then use the range information, which *Gregory's* device does provide, in order to aim a gun attached to that conventional reticle to compensate for projectile drop. Thus, were someone to take *Gregory's* Col 10.61-10.69 comments, one would be using the range finder of *Gregory* to find distance, not to aim:

Similarly, while trajectory compensation has been described, compensation for lead is obvious once the concept of the invention is understood, and is therefore contemplated. Lead is generally described as the aiming ahead of a moving object such that factors such as the speed, direction, etc., of the projectile are compensated for such that the path of the object and projectile will intersect at the same time.

Since *Gregory's* device does not function as a gunsight when attached to a gun (none of *Gregory's* Figures or description describe a device that functions to correctly aim a gun if the rangefinder is attached to a gun), but it does function as a range finder, which is what *Gregory* describes as his device, provides an output indication (i.e., range) that could be used with a conventional aiming device. The Examiner wants to assume *Gregory* is a gunsight and change *Gregory* into something it is not. The only way one could argue that all of the Figures of *Gregory* were mistakes and one of skill in the art would have corrected such errors, is to ignore the plain meaning of *Gregory's* description of his range finder.

In contrast, the present claims invention of claim 1 presents a combination of limitations that is not described nor implied in *Gregory*. Further, the descriptions provided by *Gregory* teach away from attaching the device to a gun, since no embodiment functions in an aiming capacity if attached to a gun. *Gregory* fails as an anticipating for claims 1, 4-5, 10, 12, 14, 16-17, 19-22, and 26. Accordingly, reconsideration of the rejection and allowance of these claims is respectfully requested.

#### ***Claim Rejections – 35 USC § 102***

Regarding October 25, 2005, Office Action § 2: Claims 1, 3-5, 10-12, 14-17, 19-22, and 26 were rejected by the Examiner under 35 U.S.C. 102(b) as being anticipated by *Shepherd* (US Patent 4,584,776). Applicant respectfully traverses. *Shepherd* describes a telescopic gunsight. In contrast to *Gregory*, *Shepherd*'s Figure 7 does show smaller outlines closer to a gunbarrel, as is required to compensate for projectile drop. However, *Shepherd*'s Figure 7 shows a substantially straight line, this line is not aligned or though the outlines of the little army men, but rather to the side. Further, *Shepherd*'s Figure 7 does not show a second direction, in contrast to the Examiner's argument. Further, the marks to the left and right are reticle marks all equal sized to compensate for windage, and Applicant does not see where target motion is compensated by "first sight indicator configured to appear, as viewed, to be closer to the gunbarrel, and a second sight indicator, smaller than the first sight indicator and configured to be further from the gunbarrel, both along a first direction that extends from the gunbarrel" as recited in claim 1. Similar arguments apply to the other present claims. Thus, *Shepherd* fails as an anticipating for claims 1, 3-5, 10-12, 14-17, 19-22, , and 26. Accordingly, reconsideration of the rejection and allowance of these claims is respectfully requested.

#### ***Claim Rejections – 35 USC § 103***

Regarding October 25, 2005, Office Action § 5: Claims 124-25 were rejected by the Examiner under 35 U.S.C. 103(a) as being unpatentable by *Gregory* (US Patent 4,787,739) in view of Lyman Jr. Applicant respectfully traverses. The arguments above regarding *Gregory* being a

rangefinder, in combination with Applicant's discussion in the Response of 8-22-05 make it non-obvious to clamp to a gun. Accordingly, reconsideration of the rejection and allowance of these claims is respectfully requested.

**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney ((952) 278-3501) to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 502931.

Respectfully submitted,

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